

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

MFA.No. 914 of 2001()

OPMV.1439/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANT:PETITIONER

**V.K.VIJU, S/O.KURIAKKU,
VADAKKAN HOUSE, PAREMPADOM
AGATHIYOOR, THRISSUR DISTRICT.**

**BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH**

RESPONDENTS:RESPONDENTS

- 1. K.T.DAVIS, S/O.THOMAS,
KUTHOOR HOUSE,
VALLARAKKAD POST,
ERUMAPETTY, THRISSUR.**
- 2. C.A.VELAYUDHAN, S/O.AYYAPPAN,
CHAKKALAKKAL HOUSE,
AGATHIYOOR, THRISSUR.**
- 3. THE ORIENTAL INSURANCE CO. LTD.,
BRANCH KUNNAMKULAM.**

**BY ADV. SRI.DILIP J. AKKARA FOR R1
SRI.MATHEWS JACOB FOR R3**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.R.RAMAN, J.

M.F.A. NO. 914 OF 2001

Dated this the 1st day of February, 2007

J U D G M E N T

The appellant was a claimant in MVOP 1439/1998. He sustained injuries in a motor accident while walking through the road on 19/5/98. An autorikshaw driven by the 2nd respondent came and hit behind him causing serious injuries. He was hospitalised and he was in the hospital for more than 40 days. He underwent two operations. According to him he was a conductor earning Rs.4,500/-. A certificate from the employer was also produced. The court below found that the accident occurred not solely due to the negligence of the autorikshaw driver and placing reliance on the scene mahazar, it was found that the accident occurred somewhere in the middle of the road thereby inferring that there is contributory negligence on the part of the appellant also and apportioned the liability equally. A total amount of Rs.37,500/- was awarded and the petitioner was awarded 50% of the same. The vehicle had valid insurance and 3rd respondent was the insurer. The appellant challenges the

award mainly contending that the finding that the appellant was also negligent equally with that of the driver is without any basis. He also submitted that the certificate issued by the employer evidencing a monthly salary of Rs.4,500/- was brushed aside by the court below and notional income of Rs.1,500/- was fixed which is clearly unjust and illegal. He further contends that the compensation awarded in the various heads are too low.

2. The learned counsel appearing for the 3rd respondent would support the award passed by the Tribunal.

3. Heard both sides.

4. The Tribunal in paragraph 8 found that the 2nd respondent driver of the autorikshaw remained ex parte and thereby impliedly admitting the accident and the allegation of negligence against him. But it still went on to hold in paragraph 9 that the accident occurred somewhere in the middle of the road thereby inferring that there is contributory negligence on the part of the appellant. But the Tribunal failed to notice that the mud portion of the road was fully grown with bushes and further the appellant was also walking through the same direction and according to him the autorikshaw came and hit behind him. As per the scene mahazar, the accident point could be seen at a

distance of 23 metres. Therefore if the autorikshaw driver had applied his break seeing the person on the road, the accident could have been avoided. However, there is no justification for the appellant to walk through the middle of the road. In these circumstances apportioning of the liability equally between the appellant and the autorikshaw driver may not be justified. The autorikshaw driver has not given any evidence contra to that of the appellant.

5. In these circumstances, I find that the appellant's contributory negligence should be fixed at 40%. The Tribunal has awarded only an amount of Rs.8,000/- towards pain and suffering. The appellant has undergone two operations and continued in the hospital for more than 40 days. In these circumstances, an amount of Rs.10,000/- in all should have been awarded. Hence under this head an amount of Rs.2,000/- more is to be awarded. Similarly, the appellant's monthly income was fixed on Rs.1,500/- and three months loss of earning was calculated at Rs.4,500/-. The appellant has produced a certificate from his employer. True that the employer was not examined in this case. But the fact remains that the appellant had a consistent case that he was a conductor in the bus. Even in the

FI statement, he has stated that he was a conductor in St. Antony's Bus. While examined as PW1 also, he had deposed that he was a conductor of a bus. There is no contra evidence to this. Therefore the fact remains that he was employed. If so, there is no justification for fixing the notional income at Rs.1,500/-. Accordingly, I fix the amount Rs.4,000/- as the probable income of the appellant, in which case the loss of earning for three months will be Rs.12,000/- instead of Rs.4,500/-. Though the appellant has contended that he is entitled for enhancement of the compensation under the other heads, I am not inclined to grant any such enhancement as reasonable compensation has been awarded

6. In the result, an amount of Rs.44,000/- is fixed as the amount of compensation payable and the appellant will be entitled for 60% of the same which comes to Rs.26,400/-. Appellant will also be entitled for interest as awarded by the Tribunal.

Appeal is partly allowed as above.

P.R.RAMAN, JUDGE

Rp